

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
June 16, 2015

v

DEMARKO ANTONIO-JUMAR PLAIN,

Defendant-Appellee.

No. 322358
Tuscola Circuit Court
LC No. 14-013050-FH

Before: METER, P.J., and CAVANAGH and WILDER, JJ.

PER CURIAM.

Plaintiff appeals by right from an order of the circuit court granting defendant's motion to dismiss a charge of absconding or forfeiting a felony bond in violation of MCL 750.199a. We affirm.

Defendant was charged with possession of marijuana, second offense, MCL 333.7403(2)(d) and MCL 333.7413(2). When defendant failed to appear for trial, the prosecution filed a separate charge of absconding or forfeiting a felony bond in violation of MCL 750.199a, which states in relevant part that any person who absconds on or forfeits a bond "given in any criminal proceedings wherein felony is charged shall be deemed guilty of a felony." After defendant was arrested and bound over to circuit court, he filed a motion to dismiss the absconding charge, arguing that possession of marijuana, second offense, was a misdemeanor and could not satisfy the felony requirement of the absconding charge. The trial court agreed, and granted his motion to dismiss.

Plaintiff argues on appeal that the designation of possession of marijuana, second offense, as a misdemeanor under the Michigan Public Health Code, MCL 333.1101 *et seq.*, is irrelevant for charges brought under the Michigan Penal Code (MPC), MCL 750.1 *et seq.* Plaintiff reasons that because defendant was charged with absconding or forfeiting his bond under MPC, the MPC controls whether defendant's possession of marijuana, second offense, is categorized as a felony or a misdemeanor. Plaintiff further reasons that, because marijuana possession, second offense, is punishable by up to two years imprisonment and a \$4,000 fine, or both, it falls squarely within the MPC's general definition of a felony as an offense punishable by death or imprisonment in the state prison. MCL 750.7. Therefore, plaintiff concludes, possession of marijuana, second offense, is a felony for purposes of charges brought under the MPC, and the trial court erred in dismissing the absconding charge.

This Court reviews a trial court's decision on a motion to dismiss a charge brought against a defendant for an abuse of discretion. *People v Nicholson*, 297 Mich App 191, 196; 822 NW2d 284 (2012). "An abuse of discretion occurs . . . when the trial court chooses an outcome falling outside [the] principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

It is well-established that offenses defined as misdemeanors may be deemed as felonies for the Code of Criminal Procedure's¹ post-conviction habitual-offender, probation, and consecutive sentencing statutes "in order to enhance the punishment imposed upon those who have been found guilty of more serious crimes and who repeatedly engage in criminal acts." *People v Smith*, 423 Mich 427, 445; 378 NW2d 384 (1985). However, although a misdemeanor that may result in two years' imprisonment may be deemed a felony for the Code of Criminal Procedure's post-conviction statutes, "it cannot be deemed a felony for purposes of the Penal Code." *People v Williams*, 243 Mich App 333, 335; 620 NW2d 906 (2000). Plaintiff has not identified any persuasive authority that calls into doubt the application of *Williams* to the facts of the instant case.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder

¹ MCL 760.1 *et seq.*